

## **IC 6-2.5-7**

### **Chapter 7. Collection and Remittance of State Gross Retail Tax on Motor Fuel**

#### **IC 6-2.5-7-1**

##### **Definitions**

Sec. 1. For purposes of this chapter:

"Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

"Gasoline" has the same meaning as the definition contained in IC 6-6-1.1-103.

"Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

"Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

"Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

"Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

"Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.

"Federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.

"Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.

"Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

- (i) the total price per unit; minus
- (ii) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the total price per unit.

"Total price per unit" means the price per unit at which gasoline or special fuel is actually sold, including the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the sales price.

"Distributor" means a person who is the first purchaser of gasoline from a refiner, a terminal operator, or supplier, regardless of the location of the purchase.

"Prepayment rate" means a rate per gallon of gasoline, rounded to the nearest one-tenth of one cent (\$0.001), determined by the department by determining the product of:

- (1) the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax; multiplied by
- (2) the state gross retail tax rate; multiplied by
- (3) ninety percent (90%).

"Purchase or shipment" means a sale or delivery of gasoline, but does not include:

- (1) an exchange transaction between refiners, terminal operators, or a refiner and terminal operator; or

(2) a delivery by pipeline, ship, or barge to a refiner or terminal operator.

"Qualified distributor" means a distributor who:

- (1) is a licensed distributor under IC 6-6-1.1; and
- (2) holds an unrevoked permit issued under section 7 of this chapter.

"Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

"Terminal operator" means a person that:

- (1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or
- (2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.81-1983, SEC.1; P.L.94-1987, SEC.1; P.L.277-1993(ss), SEC.41; P.L.222-1999, SEC.1.*

## **IC 6-2.5-7-2**

### **Display of price**

Sec. 2. Except as provided in section 2.5 of this chapter, a retail merchant who uses a metered pump to dispense gasoline or special fuel shall display on the pump the total price per unit of the gasoline or special fuel. Subject to the provisions of section 2.5 of this chapter, a retail merchant may not advertise the gasoline or special fuel at a price that is different than the price that he is required to display on the metered pump.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.81-1983, SEC.2.*

## **IC 6-2.5-7-2.5**

### **Pumps designated for trucks only; requirements**

Sec. 2.5. (a) A retail merchant may designate any metered pumps at a business location that dispense special fuel as being "for trucks only". To do this, a retail merchant must place on the pump a sign that states that fuel dispensed from the metered pump may only be placed in the fuel supply tanks of a truck. A sign that reads "TRUCKS ONLY" is sufficient to meet the requirements of this subsection.

(b) A retail merchant may not dispense special fuel from a metered pump that is designated for trucks only into the supply tank of a vehicle that is not a truck.

(c) A retail merchant is not required to display the total price per unit of the special fuel on a metered pump if that particular metered pump is designated for trucks only.

(d) A retail merchant may advertise special fuel at a price that

does not include gross retail taxes that may be due on the sale of the special fuel only if he maintains a metered pump that is designated for trucks only. If a retail merchant advertises special fuel at a price that does not include any gross retail taxes that may be due on the sale of the special fuel, the retail merchant must display in easily read lettering above or below the advertised price the words "EXEMPT TRUCKS ONLY".

*As added by P.L.81-1983, SEC.3.*

### **IC 6-2.5-7-3**

#### **Retail merchant; calculation of tax liability; metered pump sales; gasoline; kerosene; special fuels**

Sec. 3. (a) With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) the price per unit before the addition of state and federal taxes; multiplied by

(2) six percent (6%).

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel or kerosene which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) the price per unit before the addition of state and federal taxes; multiplied by

(2) six percent (6%).

Unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.2-1982(ss), SEC.5; P.L.81-1983, SEC.4; P.L.80-1983, SEC.2; P.L.11-1984, SEC.2; P.L.222-1999, SEC.2; P.L.192-2002(ss), SEC.63.*

### **IC 6-2.5-7-4**

#### **Exempt transactions; refunds; procedures**

Sec. 4. (a) If a sale of gasoline or special fuel is exempt from the state gross retail tax, the person who pays the tax to the retail merchant may file a claim for refund with the department. The person must file the claim on the form, in the manner, and with the supporting documentation, prescribed by the department. If a person properly files a claim for refund, the department shall refund to him the state gross retail tax collected with respect to the exempt transaction.

(b) Notwithstanding the other provisions of this section, the department may prescribe simplified procedures to make adjustments

for exempt transactions.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.81-1983, SEC.5.*

#### **IC 6-2.5-7-5**

##### **Reports; reporting period; metered pump sales; remitted tax amount; deduction of prepayment amounts**

Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

- (1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.
- (2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.
- (3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- (4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.
- (5) The total amount of money received from the sale of special fuel during the period covered by the report.
- (6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax which he has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) an amount equal to:

- (1) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus
- (2) the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

*As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1980, P.L.10, SEC.2; P.L.2-1982(ss), SEC.6; P.L.81-1983, SEC.6;*

*P.L.80-1983, SEC.3; P.L.11-1984, SEC.3; P.L.94-1987, SEC.2; P.L.277-1993(ss), SEC.42; P.L.192-2002(ss), SEC.64.*

#### **IC 6-2.5-7-6**

##### **Prepayment credit; claim for refund; transfers from general fund**

Sec. 6. (a) If the deduction under section 5(c) of this chapter exceeds the amount of gross retail tax required to be remitted under section 5(b) of this chapter, the retail merchant is entitled to a credit. The credit shall be used as follows:

(1) First, the credit shall be applied against gross retail and use tax liability of the retail merchant that is required to be remitted under IC 6-2.5-6.

(2) Second, any amount remaining shall be applied against the gasoline tax liability of the retail merchant, as determined under IC 6-6-1.1, excluding any liability for gasoline delivered to a taxable marine facility.

A retail merchant may file a claim for a refund instead of taking a credit or for a refund of any excess tax payment remaining after the credits allowed by this section. In addition, a retail merchant may file a claim for a refund under section 12 of this chapter.

(b) A retail merchant that is entitled to a refund under this section must file a claim for the refund on the form approved by the department and must include any supporting documentation reasonably required by the department. If a retail merchant files a completed refund claim form that includes all supporting documentation, the excess tax payment that is not refunded within ninety (90) days accrues interest as provided in IC 6-8.1-9-2.

(c) Before the fifth day of each month, the department shall determine and notify the treasurer of state of the amount of credits applied during the preceding month against the gasoline tax under this section. The treasurer of state shall transfer from the general fund:

(1) to the highway, road, and street fund, twenty-five percent (25%) of the amount set forth in the department's notice; and

(2) to the motor fuel tax fund of the motor vehicle highway account, seventy-five percent (75%) of the amount set forth in the department's notice.

*As added by P.L.94-1987, SEC.3.*

#### **IC 6-2.5-7-7**

##### **Distributor permit to collect prepayment from retail merchants**

Sec. 7. (a) A distributor desiring to receive gasoline within Indiana without prepaying gross retail tax must hold an uncanceled permit issued by the department to collect prepayments of gross retail tax from retail merchants.

(b) To obtain a permit, a distributor must file with the department a sworn application containing information that the department reasonably requires.

(c) The department may refuse to issue a permit to a distributor if:

(1) the application is filed by a distributor whose permit has

previously been cancelled for cause;

(2) the application is not filed in good faith, as determined by the department; or

(3) the application is filed by some person as a subterfuge for the real person in interest whose permit has previously been cancelled for cause.

(d) A permit may not be issued unless the application is accompanied by an audited and current financial statement and a license fee of one hundred dollars (\$100).

(e) A permit issued under this section is not assignable and is valid only for the distributor in whose name it is issued. If there is a change in name or ownership, the distributor must apply for a new permit.

(f) The department may revoke a distributor's permit for good cause.

(g) Before being denied a permit under subsection (c) or before having a permit revoked under subsection (f), a distributor is entitled to a hearing after five (5) days written notice. At the hearing the distributor may appear in person or by counsel and present testimony.

(h) The department shall keep a record of all qualified distributors.

*As added by P.L.94-1987, SEC.4.*

## **IC 6-2.5-7-8**

### **Distributor permittees; bond; financial statements**

Sec. 8. (a) The department may require a distributor to file, concurrently with the filing of an application for a permit, a bond:

(1) in an amount of not less than two thousand dollars (\$2,000) nor more than a three (3) month prepayment tax liability for the distributor, as estimated by the department;

(2) in cash or with a surety company approved by the department;

(3) upon which the distributor is the principal obligor and the state is the obligee; and

(4) conditioned upon the prompt filing of true reports and payment of all prepayment of gross retail taxes collected by the distributor, together with any penalties and interest, and upon faithful compliance with this chapter.

The department shall determine the amount of the distributor's bond, if any.

(b) If after a hearing (after at least five (5) days written notice) the department determines that the amount of a distributor's bond is insufficient, the distributor shall upon written demand of the department file a new bond.

(c) The department may require a distributor to file a new bond with a satisfactory surety in the same form and amount if:

(1) liability upon the old bond is discharged or reduced by judgment rendered, payment made, or otherwise; or

(2) in the opinion of the department any surety on the old bond

becomes unsatisfactory.

(d) If a new bond obtained under subsection (b) or (c) is unsatisfactory, the department shall cancel the permit of the distributor. If the new bond is satisfactorily furnished, the department shall release in writing the surety on the old bond from any liability accruing after the effective date of the new bond.

(e) Sixty (60) days after making a written request for release to the department, the surety of a bond furnished by a distributor is released from any liability to the state accruing on the bond. The release does not affect any liability accruing before expiration of the sixty (60) day period. The department shall promptly notify the distributor furnishing the bond that the surety has requested release. Unless the distributor obtains a new bond that meets the requirements of this section and files the new bond with the department within the sixty (60) day period, the department shall cancel the distributor's permit.

(f) The department may require a distributor to furnish audited annual financial statements to determine if any change is required in the amount of the distributor's bond.

*As added by P.L. 94-1987, SEC.5. Amended by P.L. 71-1993, SEC.11.*

#### **IC 6-2.5-7-9**

##### **Amount of prepayment**

Sec. 9. (a) Except as provided in section 13 of this chapter, at the time of purchase or shipment of gasoline from a refiner or terminal operator, a distributor who is not a qualified distributor shall prepay to the refiner or terminal operator the state gross retail tax in an amount determined under subsection (d).

(b) At the time of purchase or shipment of gasoline from a qualified distributor, a retail merchant shall prepay to the qualified distributor the state gross retail tax in an amount determined under subsection (d).

(c) If gasoline is delivered to a retail outlet for resale and the gross retail tax in the amount determined under subsection (d) has not been prepaid on the gasoline, the refiner, terminal operator, or qualified distributor making the delivery shall prepay to the department the gross retail tax in an amount determined under subsection (d). A bulk plant is not considered to be a retail outlet.

(d) The amount of tax that must be prepaid under this section equals:

- (1) the prepayment rate per gallon of gasoline; multiplied by
- (2) the number of invoiced gallons purchased or shipped.

(e) A purchaser or receiver of gasoline that makes a prepayment under this chapter is not subject to any liability to the state for the amount of the prepayment.

*As added by P.L. 94-1987, SEC.6.*

#### **IC 6-2.5-7-10**

##### **Remitting tax receipts; reports**

Sec. 10. (a) Each refiner or terminal operator and each qualified

distributor that has received a prepayment of the state gross retail tax under this chapter shall remit the tax received to the department semimonthly, according to the following schedule:

(1) On or before the tenth day of each month for prepayments received after the fifteenth day and before the end of the preceding month.

(2) On or before the twenty-fifth day of each month for prepayments received after the end of the preceding month and before the sixteenth day of the month in which the prepayments are made.

(b) Before the end of each month, each refiner or terminal operator and each qualified distributor shall file a report covering the prepaid taxes received and the gallons of gasoline sold or shipped during the preceding month. The report must include the following:

(1) The number of gallons of gasoline sold or shipped during the preceding month, identifying each purchaser or receiver as required by the department.

(2) The amount of tax prepaid by each purchaser or receiver.

(3) Any other information reasonably required by the department.

*As added by P.L.94-1987, SEC.7.*

#### **IC 6-2.5-7-11**

##### **Reports of distributors**

Sec. 11. Each distributor that prepays the state gross retail tax under this chapter shall file a monthly report with the department. The report shall be filed no later than the last day of the month following the month that the report covers. The report must include the following:

(1) The number of gallons of gasoline purchased or received by the distributor from each refiner, terminal operator, or another distributor.

(2) The amount of state gross retail tax prepaid to each refiner, terminal operator, or distributor.

(3) The number of gallons of gasoline sold to each distributor, retail merchant, exempt purchaser, or other person and the amount of state gross retail tax collected from each distributor, retail merchant, or other person identifying the location of each distributor, retail merchant, exempt purchaser, or other person, as required by the department.

(4) Any other information reasonably required by the department.

*As added by P.L.94-1987, SEC.8.*

#### **IC 6-2.5-7-12**

##### **Exempt purchasers from distributor; report; refund**

Sec. 12. (a) Except as provided in subsection (b), a distributor that prepays the state gross retail tax under this chapter shall separately state the amount of tax prepaid on the invoice the distributor issues to its purchaser or recipient. The purchaser or recipient shall pay to



the distributor an amount equal to the prepaid tax.

(b) A distributor that:

- (1) prepays the state gross retail tax under this chapter;
- (2) is a retail merchant; and
- (3) sells gasoline that is exempt from the gross retail tax, as evidenced by a purchaser's exemption certificate issued by the department;

may not require the exempt purchaser to pay the gross retail taxes prepaid in the gasoline sold to the exempt purchaser. A distributor that has prepaid gross retail taxes and has not been reimbursed because the gasoline is sold to an exempt purchaser may file a claim for a refund (in addition to any claim for a refund under section 6 of this chapter), if the amount of unreimbursed prepaid gross retail taxes exceeds five hundred dollars (\$500). A claim for a refund must be on the form approved by the department and include all supporting documentation reasonably required by the department. If a distributor files a completed refund claim form that includes all supporting documentation, the department shall authorize the auditor of state to issue a warrant for the refund.

*As added by P.L.94-1987, SEC.9.*

#### **IC 6-2.5-7-13**

##### **Foreign distributor or distribution; reports and payments**

Sec. 13. (a) If a purchase or shipment of gasoline is made to a distributor (other than a qualified distributor) outside Indiana for shipment into and subsequent sale or use by the distributor within Indiana, the distributor shall make the prepayment required by section 9 of this chapter directly to the department. The distributor shall pay the tax and submit the report according to the schedule set forth in section 10 of this chapter.

(b) If a purchase or shipment is made within Indiana for shipment and subsequent sale outside Indiana, the purchase or shipment is exempt from the prepayment requirements of section 9 of this chapter.

*As added by P.L.94-1987, SEC.10.*

#### **IC 6-2.5-7-14**

##### **Prepayment rate schedule**

Sec. 14. (a) Before June 10 and December 10 of each year, the department shall determine and provide to:

- (1) each refiner and terminal operator and each qualified distributor known to the department to be required to collect prepayments of the state gross retail tax under this chapter; and
- (2) any other person that makes a request;

a notice of the prepayment rate to be used during the following six (6) month period. The department shall also have the prepayment rate published in the June and December issues of the Indiana Register.

(b) In determining the prepayment rate under this section, the department shall use the most recent retail price of gasoline available

to the department.

*As added by P.L.94-1987, SEC.11.*

#### **IC 6-2.5-7-15**

##### **Penalties**

Sec. 15. (a) A refiner, terminal operator, or distributor (including a qualified distributor) that fails to remit the tax or file the returns or reports required by this chapter is subject to the penalties set forth in IC 6-8.1-10.

(b) A distributor that fails to file the reports required by section 11 of this chapter is subject to the penalties set forth in IC 6-8.1-10.

*As added by P.L.94-1987, SEC.12.*